

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HANA ETCHEVERRY, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FRANCISCAN HEALTH SYSTEM D/B/A
CHI FRANCISCAN HEALTH,
FRANCISCAN MEDICAL GROUP,
FRANCISCAN HEALTH VENTURES,
HARRISON MEDICAL CENTER, and
HARRISON MEDICAL CENTER
FOUNDATION.

Defendants.

Case No. 3:19-cv-05261-RJB-MAT

**AGREEMENT REGARDING
DISCOVERY OF ELECTRONICALLY
STORED INFORMATION AND
[PROPOSED] ORDER**

The parties hereby stipulate to the following provisions regarding the discovery
of electronically stored information (“ESI”) in this matter:

A. General Principles

1. An attorney’s zealous representation of a client is not compromised by conducting
discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate
in facilitating and reasonably limiting discovery requests and responses raises litigation costs and
contributes to the risk of sanctions.

2. The proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in
each case when formulating a discovery plan. To further the application of the proportionality
standard in discovery, requests for production of ESI and related responses should be reasonably
targeted, clear, and as specific as possible.

1 **B. ESI Disclosures**

2 Within 30 days after the Rule 26(f) conference, or at a later time if agreed to by the parties,
3 each party shall disclose:

4 1. Custodians. The five custodians most likely to have discoverable ESI in their possession,
5 custody or control. The custodians shall be identified by name, title, connection to the instant
6 litigation, and the type of the information under his/her control. If either party determines that the
7 identification of additional custodians is necessary, the parties shall confer in good faith to address
8 that issue and may so stipulate.

9 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g. shared drives,
10 servers, etc.), if any, likely to contain discoverable ESI.

11 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain
12 discoverable ESI (e.g. third-party email and/or mobile device providers, “cloud” storage, etc.)
13 and, for each such source, the extent to which a party is (or is not) able to preserve information
14 stored in the third-party data source.

15 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI
16 (by type, date, custodian, electronic system or other criteria sufficient to specifically
17 identify the data source) that a party asserts is not reasonably accessible under Fed. R. Civ.
18 P. 26(b)(2)(B).

19 **C. Preservation of ESI**

20 The parties acknowledge that they have a common law obligation to take reasonable and
21 proportional steps to preserve discoverable information in the party’s possession, custody or
22 control. With respect to preservation of ESI, the parties agree as follows:

23 1. Absent a showing of good cause by the requesting party, the parties shall not be
24 required to modify the procedures used by them in the ordinary course of business to back-up
25 and archive data; provided, however, that the parties shall preserve all discoverable ESI in their
26 possession, custody or control.

2. All parties shall supplement their disclosures in accordance with Rule 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure where that data is created after a disclosure or response is made (unless excluded under (C)(3) or (D)(1)-(2) below).

3. Absent a showing of good cause by the requesting party, the following categories of ESI need not be preserved:

- a. Deleted, slack, fragmented, or other data only accessible by forensics.
- b. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.
- c. On-line access data such as temporary internet files, history, cache, cookies, and the like.
- d. Data in metadata fields that are frequently updated automatically, such as last-opened dates (see also Section (E)(5)).
- e. Back-up data that are substantially duplicative of data that are more accessible elsewhere.
- f. Server, system or network logs.
- g. Data remaining from systems no longer in use that is unintelligible on the systems in use.
- h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), provided that a copy of all such electronic data is routinely saved elsewhere (such as on a server, laptop, desktop computer, or "cloud" storage).
- i. Social media data.

D. Privilege

1. With respect to privileged or work-product information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

2. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

3. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party, and its production shall not constitute a waiver of such protection, if: (i) such information appears on its face to have been inadvertently produced

1 or (ii) the producing party provides notice within 15 days of discovery by the producing
2 party of the inadvertent production.

3 4. Privilege Log Based on Metadata. The parties agree that privilege logs shall include
4 a unique identification number for each document and the basis for the claim (attorney-client
5 privileged or work-product protection). For ESI, the privilege log may be generated using
6 available metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title
7 and date created. Should the available metadata provide insufficient information for the purpose
8 of evaluating the privilege claim asserted, the producing party shall include such additional
9 information as required by the Federal Rules of Civil Procedure.

10 **E. ESI Discovery Procedures**

11 1. On-site inspection of electronic media. Such an inspection shall not be permitted
12 absent a demonstration by the requesting party of specific need and good cause or by agreement
13 of the parties.

14 2. Search methodology. The parties shall timely attempt to reach agreement on
15 appropriate search terms, or an appropriate computer- or technology-aided methodology, before
16 any such effort is undertaken. The parties shall continue to cooperate in revising the
17 appropriateness of the search terms or computer- or technology-aided methodology.

18 In the absence of agreement on appropriate search terms, or an appropriate computer- or
19 technology-aided methodology, the following procedures shall apply:

20 a. A producing party shall disclose the search terms or queries, if any, and
21 methodology that it proposes to use to locate ESI likely to contain discoverable information. The
22 parties shall meet and confer to attempt to reach an agreement on the producing party's search
23 terms and/or other methodology.

24 b. If search terms or queries are used to locate ESI likely to contain
25 discoverable information, a requesting party is entitled to no more than 15 additional terms or
26 queries to be used in connection with further electronic searches absent a showing of good cause

1 or agreement of the parties. The 15 additional terms or queries, if any, must be provided by
2 the requesting party within 14 days of receipt of the producing party's production.

3 c. Focused terms and queries should be employed; broad terms or queries,
4 such as product and company names, generally should be avoided. Absent a showing of good
5 cause, each search term or query returning more than 250 megabytes of data is presumed to be
6 overbroad, excluding Microsoft PowerPoint files, image and audio files, and similarly large file
7 types. Further, the parties shall work cooperatively to address any concerns that may arise
8 regarding the volume of data responsive to a given search term or query.

9 d. The producing party shall search both non-custodial data sources and ESI
10 maintained by the custodians identified above.

11 3. Format. The parties agree that ESI will be produced to the requesting party with
12 searchable text, in a format to be decided between the parties. Acceptable formats include, but are
13 not limited to, native files, multi-page TIFFs (with a companion OCR or extracted text file),
14 single-page TIFFs (only with load files for e-discovery software that includes metadata fields
15 identifying natural document breaks and also includes companion OCR and/or extracted text
16 files), and searchable PDF. Unless otherwise agreed to by the parties, files that are not easily
17 converted to image format, such as spreadsheet, database and drawing files, should be produced
18 in native format. The parties agree to work together, in good faith, to resolve additional formatting
19 and production issues that may arise.

20 4. De-duplication. The parties may de-duplicate their ESI production across
21 custodial and non-custodial data sources after disclosure to the requesting party.

22 5. Metadata fields. If the requesting party seeks metadata, the parties agree that only
23 the following metadata fields need be produced: document type; custodian and duplicate
24 custodians; author/from; recipient/to, cc and bcc; title/subject; file name and size; original file
25 path; date and time created, sent, modified and/or received; and hash value.

1 RESPECTFULLY SUBMITTED AND DATED this 13th day of June, 2019.

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3 /s/ Donald L. Samuels

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Attorneys for Plaintiff

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on June 13, 2019, a true and accurate copy of the foregoing
22 was electronically filed with the Clerk of Court using the CM/ECF system, which will
23 automatically send email notification of such filing to all counsel of record.
24

25 /s/ Carolyn H. Cottrell

26 Counsel for Plaintiff

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2 **ORDER**

3 Based on the foregoing, IT IS SO ORDERED.

4 DATED: June 26, 2019
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8 Mary Alice Theiler
9 United States Magistrate Judge
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